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December 4, 2006

BY HAND DELIVERY

Jeff S. Jordan, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5834

Dear Mr. Jordan:

On behalf of Darcy Burner, Darcy Burner for Congress, and Phillip Lloyd as treasurer (collectively, the "Committee"), this letter is submitted in response to the complaint filed by the Washington State Republican Party (the "Complaint") and subsequently labeled MUR 5834. The Complaint should be dismissed immediately.

Ms. Burner was a candidate for the U.S. House of Representatives in Washington's Eighth District, who lost in the 2006 general election. The Complaint falsely alleges that the Committee's television ad, "Burner Bio," was not entitled to the lowest unit charge, and that the Committee would have received a prohibited in-kind corporate contribution from any television station(s) providing lowest unit charge.

The Washington State Republican Party's Complaint is based on a flawed legal analysis of the FCC's requirements for lowest unit charge. The FCC's "stand by your ad" requirement for lowest unit charge is set forth in 47 U.S.C. § 315(b)(2), and only applies to a candidate committee's advertisement when, among other requirements, the advertisement makes a direct reference to another candidate for the same office. See 47 U.S.C. § 315(b)(2)(A). No version of the "Burner Bio" ad contains a reference to any opponent of Ms. Burner; the content is entirely focused on Ms. Burner. See Exhibits A-D (included on the enclosed DVD). Therefore, as a matter of law, the "Burner Bio" was never subject to the FCC's disclaimer requirements set forth in 47 U.S.C. § 315 (b)(2)(C).¹ There is no legal merit whatsoever to the claim that the

¹ The Committee also notes that even in cases where an advertisement is subject to 47 U.S.C. § 315 (b) and fails to satisfy its disclaimer requirements, the Commission has not acted to treat the

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Committee received a corporate contribution from any television station that provided lowest unit charge to the Committee in connection with the "Burner Bio."

The Committee acknowledges that the initial version of the "Burner Bio" that ran briefly contained the visual and oral, but not the written, components of the Commission's "stand by your ad" provision set forth in 11 C.F.R. § 110.11(b)(3), which is separate and distinct from the FCC's "stand by your ad" requirement for lowest unit charge set forth in 47 U.S.C. § 315(b). Even if the "Burner Bio" had been subject to the FCC's disclaimer requirements, the omission was inadvertent, short-term, and fixed immediately when discovered. As indicated in the attached declarations from the Committee and its vendor, the Committee added the written component of the "stand by your ad" disclaimer in "Burner Bio" and another substantially similar biographical advertisement as soon as the inadvertent omission was discovered – over one month before the Washington State Republican Party filed the Complaint. *See Exhibits C-F.*

As a practical matter, it is highly improbable that the goal of the Commission's "stand by your ad" requirement was not satisfied, even with the technical omission in the ad's initial version. A viewer who wished to know whether Ms. Burner had approved the advertisement would not have had any doubt after viewing the ad, filled with direct footage and biographical information about Ms. Burner, her personal delivery of a stand by your ad message, and a written "Paid for by Darcy Burner for Congress" disclaimer at the end of the ad.

In light of the content of the biographical advertisement at issue, and the Committee's good faith effort to comply with the law as soon as it discovered its own omission, the Commission should exercise its prosecutorial discretion and dismiss the Complaint immediately.

Thank you for your consideration in this matter.

Very truly yours,



Caroline P. Goodson
Ryan McBrayer
Counsel to the Committee

Enclosures

television stations that continue to provide lowest unit charge for such an advertisement as contributors of prohibited corporate contributions. *See Advisory Opinion 2006-31.*

Exhibits A-D (a DVD) are not included in this file

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BEFORE THE FEDERAL ELECTION COMMISSION

In re

MUR 5834

FEDERAL ELECTION COMMITTEE
COMPLAINT AGAINST DARCY
BURNER FOR CONGRESS, DATED
OCTOBER 3, 2006

DECLARATION OF MARK SQIER

I, Mark Squier, state as follows:

1. My name is Mark Squier. I am a partner in McMahon, Squier and Associates ("MSA"), and producer of the video materials mentioned in the Washington State Republican Party FEC complaint dated October 3, 2006. I have reviewed the complaint in the above-referenced matter.
2. MSA contracted with the campaign committee, Darcy Burner for Congress ("Burner Campaign"), to produce advertisements as well as to buy and place the advertising on local television stations during the 2006 election.
3. MSA produced and placed its first advertisement on behalf of the Burner Campaign on August 10, 2006. The first advertisement was titled "Bio" and in one-minute described Darcy's experience and qualifications for running for office. See Exhibit A. Bio carried a five-second statement by Darcy Burner in a full-screen shot, backed by a group of people in the screen with her, at the end of the advertisement. Ms. Burner stated that she approved the advertisement. Bio did not mention Ms. Burner's opponent either implicitly or explicitly. MSA placed Bio on KCPQ-TV, KING-TV, KIRO-TV, KOMO-TV, KONG-TV and KSTW-TV for display from August 10-22, 2006.
4. MSA produced and placed its second advertisement on behalf of the Burner Campaign on August 22, 2006. The second advertisement was titled "Darcy" and was the exact same spot as Bio, except the final five-second full-screen shot of and statement by Ms. Burner. For the Darcy advertisement, we replaced the final five second statement and full-screen shot of Ms. Burner in front of a group of people with



a full-screen shot of Ms. Burner by herself . Ms. Burner made the same verbal statement in Darcy that was contained in Bio. See Exhibit B.

5. The Darcy advertisement did not mention Ms. Burner's opponent either implicitly or explicitly. MSA placed Darcy on the same stations.

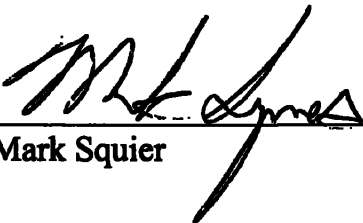
6. Both Bio and Darcy in their original form contained a written statement at the bottom of the screen in the final five-second segment that said, "Paid for by Darcy Burner for Congress."

7. The campaign notified us two days later on August 24, 2006 at 5:42 PM EDT, that the written statement needed to be modified. Both advertisements were airing then; the first advertisement was being phased out as the second advertisement was being phased in. We accordingly changed both Bio and Darcy to include a new written statement in the final five-second segment. We renamed Bio as "Bio-revised" and renamed Darcy as "Darcy - revised." See Exhibits C and D.

8. We notified the stations on August 24, 2006 at 6:06 PM EDT that we would be sending the two corrected versions that night. We then transmitted Bio-revised and Darcy-revised via FastChannel for overnight delivery. (FastChannel is the exclusive electronic transmission network used in the broadcast and advertising industries to deliver content from buyers to stations.) We confirmed the stations immediately placed Bio-revised and Darcy-revised in rotation and that they discarded the original Bio and Darcy ads.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on December 1, 2006.



Mark Squier

BEFORE THE FEDERAL ELECTION COMMISSION

In re

MUR 5834

FEDERAL ELECTION COMMITTEE
COMPLAINT AGAINST DARCY
BURNER FOR CONGRESS, DATED
OCTOBER 3, 2006

DECLARATION OF ZACH SILK

I, Zach Silk, state as follows:

1. My name is Zach Silk. I am the Campaign Manager for the campaign committee, Darcy Burner for Congress. I ordered the general production of the video materials mentioned in the Washington State Republican Party FEC complaint dated October 3, 2006. I have reviewed the complaint in the above-referenced matter.
2. Darcy Burner for Congress ("Burner Campaign") contracted with McMahon, Squier and Associates ("MSA") to produce advertisements as well as to buy and place the advertising on local television stations during the 2006 election.
3. The Burner Campaign ordered two advertisements in July 2006 of a biographical nature for the start of our advertising campaign. I explicitly instructed MSA that the advertisement was not to mention Dave Reichert, Ms. Burner's opponent, or his record.
4. I reviewed the first advertisement, titled "Bio" by MSA, before it aired. Bio contained a written statement at the bottom of the screen in the final five-second segment ("Paid for by Darcy Burner for Congress") and a verbal statement that Ms. Burner personally approved the advertisement. I did not notice the absence of a written disclaimer describing the Burner Campaign's approval of Bio.
5. I also reviewed the second advertisement, titled "Darcy" by MSA, and did not notice the absence of a written statement describing the Burner Campaign's approval.




6. I learned on August 24, 2006, that Bio and Darcy did not contain a required written statement. I immediately contacted MSA and ordered that the advertisements be corrected. I followed up several times that afternoon, and learned the next morning that corrected versions of Bio and Darcy had replaced the original versions in our television advertising.

7. Our omission of written statements at the end of Bio and Darcy describing our approval of Bio and Darcy was inadvertent. The Burner Campaign did not intentionally omit the statements. We acted immediately to correct the omissions when they were brought to our attention.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on December 1, 2006.



Zach Silk